

# AL-MAJALLA AL AHKAM AL ADALIYYAH (The Ottoman Courts Manual (Hanafi))

## BOOK XIV ACTIONS.

### INTRODUCTION

#### TERMS OF ISLAMIC JURISPRUDENCE.

- 1613. An action consists of a claim made by one person against another in Court. The person making the claim is called the plaintiff. The person against whom the claim is made is called the defendant.
- 1614. The thing claimed is the thing about which the action is brought by the plaintiff. It is also called the subject matter of the action.
- 1615. Estoppel is some statement previously made by the plaintiff which conflicts with the action he has brought, and which causes such action to be declared null and void.

### CHAPTER I. CONDITIONS AND FUNDAMENTAL RULES RELATING TO AN ACTION AND THE DEFENCE THERETO.

#### SECTION I. CONDITIONS FOR THE VALIDITY OF AN ACTION.

- 1616. The plaintiff and the defendant must be of sound mind. A lunatic and a minor of imperfect understanding may not validly bring an action. Their tutors and guardians may act on their behalf in their capacity of plaintiff and defendant.
- 1617. The defendant must be known. Consequently, if the plaintiff alleges that he is entitled to a certain sum of money from one or more persons who are specified, inhabiting a certain village, the claim is invalid, and the defendant must be specified.
- 1618. The defendant must be present when the action comes on in Court. If the defendant fails to come to the Court, or to send a representative, action shall be taken as is set forth in the Book on the Administration of Justice by the Court.
- 1619. The subject matter of the action must be known. If it is not known, the action is invalid.
- 1620. The subject matter of the action may be made known by pointing it out, or by mentioning its qualities or by describing it. Thus, in the case of some specific piece of movable property, if such property is present in Court, it is sufficient to point it out. If it is not so present, it may be made known by mentioning the qualities description and value thereof. If it is real property, it may be designated by mentioning the boundaries thereof. If it is a debt, the nature, variety, description and amount thereof must be stated. These matters will be dealt with in the following Articles.
- 1621. If the subject matter of the action is some specific movable property and is before the Court, The plaintiff may bring an action and point to the thing claimed, asking for it to be restored to him, since the defendant has wrongfully dispossessed him thereof. If the subject matter of the action is not before the Court, but it can be sent for and produced without expense, it shall be placed before the Court for the purpose of the trial of the action, the giving of evidence, or swearing the oath. If it cannot be brought before the Court without expense, the plaintiff shall give a description and state the value thereof. In actions relating to wrongful appropriation of property, and in the case of pledges, it is not necessary to state the value.

T Example:- An action may validly be brought in which the plaintiff states that his emerald ring has been wrongfully appropriated, but fails to state the value, or even states that he does not know the value thereof.

- 1622. If the subject matter of the action consists of specific pieces of property, the nature, sort and qualities of which are different the one from the other, it is sufficient if the total value of the whole of them is stated. There is no need to state the value of each of them separately.
- 1623. If the subject matter of the action is real property, the name of the town and village or quarter and of the street and the four or three boundaries thereof, and the names of the persons, if any, to whom such such boundaries belong, together with the names of their fathers and grandfathers must be stated when the action is brought and when giving evidence. In the case of a person who is well known, however, it is sufficient to state his name and description. There is no need to state the names of his father and grandfather. Similarly, if the description of the boundaries may be dispensed with owing to their being so well known, there is no need to state the boundaries wither when bringing the action or giving evidence in connection therewith. The plaintiff may also validly bring an action stating that the real property the boundaries of which are set forth in a document he produces to the Court is his property owned in absolute ownership.
- 1624. The fact that the plaintiff correctly states the boundaries, but incorrectly states the length or area thereof in no way affects the validity of the action.
- 1625. In an action for the price of real property, it is not essential to state the boundaries thereof.
- 1626. If the subject matter of the action is a debt, the plaintiff must state the nature, variety, description and amount thereof.

Example:- It must be stated as regards the nature of the debt whether it is of gold or silver or as regards the variety whether it consists of Ottoman or English coin and in respect to the description whether it consists of sound or base coin. The amount must also be stated. If it is stated in general terms, however, to consist of so many piastres, the action is valid, and the amount in dispute will be considered with reference to the custom prevailing in the locality. If there are two types of currency recognised, and the circulation and standard of one is greater than the other, the amount will be construed with reference to the inferior currency. Again, if a person brings an action claiming so many pieces of five, the money is taken to be the black pieces of five, that is base coin, in circulation at the present time.

- 1627. If the subject matter of the action is some specific piece of property, there is no need to state how the ownership thereof was acquired, but the action may validly be brought by stating that the property in question is owned in absolute ownership. If it consists of a debt, however, the origin thereof must be stated, that is to say, whether it is price of something sold, or rent, or arising from any other reason.
- 1628. The effect of an admission is that it bears upon the subject matter of the admission. It does not bear upon the origin thereof and therefore an admission is not a cause of ownership. Consequently, no person may bring an action claiming something merely by reason of admission of the defendant.

Examples:-

(1). A brings an action alleging that certain property belongs to him, and that B has dispossessed him thereof and in addition has admitted that such property belongs to A. The action will be heard. But if A brings an action alleging that certain property is his because B, who has taken possession thereof, has admitted that it belongs to A, the action will not be heard.

(2). A brings an action alleging that B is owing him a certain sum of money on account of a loan and that B has admitted the debt. The action will be heard. But if A brings an action alleging that he owes A certain sum of money on account of a loan, and that he consequently claims this sum from him, the action will not be heard.

- 1629. The subject matter of the action must be capable of proof. Consequently, no action may validly be brought with regard to anything the existence of which can be shown to be impossible either by a process of reasoning or by custom.

Example:- A alleges that B is his son, B being older than A, and the matter of his birth well known. The action will fail.

- 1630. If the action is proved, judgement must be given against the defendant in respect to some particular thing.

Examples:-

(1). A gives something to B as loan for use. C then comes forward and claims that he is a relative of A requesting that such thing shall be lent to him. The action will fail.

(2). A appoints B his agent for a certain purpose. C comes forward and alleges that he is A's neighbour and that he is a more suitable person to be appointed agent. The action will fail.

The reason for this is that every person may lend his property for use to whomsoever he pleases as his agent and even though the matters alleged by the plaintiffs may be true, no judgement can be issued in respect to the defendant.

## SECTION II. THE DEFENCE TO AN ACTION.

- 1631. A defence consists of making an allegation by the defendant in reply to an action brought by the plaintiff.

Examples:-

(1). A brings an action claiming a certain sum of money from B on account of a loan. B replies that he has paid A, or that A has released him from the debt, or that they have come to a settlement, or that the sum in question is not a loan, but is the price of the property sold to A, or that he made a transfer to A of a sum of money due to him from C, and that the sum in question was paid by A to him in respect of such transfer. This is B's defence.

(2). A brings an action against B stating that B became surety for the payment of a sum of money due to him from C. B replies that C has paid the sum in question. This is B's defence.

(3). A brings an action against B stating that B is in possession of property belonging to him. B replies that some time ago C brought an action against him in respect to some property and that at the trial of the action A gave evidence in favour of C. This is B's defence.

(4). A brings an action against the heirs to the estate of a deceased person, claiming a certain sum of money, which the heirs deny. A proves his claim, and thereupon the heirs allege that the deceased paid the debt in his lifetime. This is the heirs' defence to the action.

- 1632. Upon the defendant proving his defence, the action brought by the plaintiff is dismissed. If he fails to prove his defence, he may call upon the plaintiff to take the oath. If the plaintiff refuses to take the oath, the defendant's defence is proved. If the plaintiff takes oath, the action brought by the plaintiff is maintained.

- 1633. If any person brings an action against some other person claiming a certain sum of money from him and the defendant replies by stating that he has transferred the payment of the debt to some third person and that both parties agreed to such transfer and proves such statement in the presence of the person to whom he transferred the debt, the claim of the plaintiff is rejected and the defendant freed therefrom. If the person to whom the debt has been transferred is not present, the defendant is considered to have answered the claim of the plaintiff pending the arrival of such person.

## SECTION III. PARTIES TO AN ACTION.

- 1634. If any person brings an action in respect to any matter, and the defendant admits the claim, judgement is given on the admission. If he denies the claim, the action is heard, and evidence may be given. If judgement is not given on the admission of the defendant, he does not become a party to the action by reason of his denial.

Example:- A brings an action against B alleging that B sent a messenger of his to buy certain property and claims the price. If B admits the claim, he is bound to pay and hand over the price of the thing sold. If he denies, he becomes the defendant to A's claim whose case is then heard and who may produce evidence. If A brings an action alleging that B's agent for purchase bought such property, and the defendant admits the claim, B must pay and hand over the price of the sale. If he denies however he does not become defendant to A. In that case the plaintiff's action will not be heard.

Tutors, guardians and trustees of the pious foundations are excepted from this rule. Thus, if any person brings an action stating that the property of an orphan or of a pious foundation is his, and the tutor or guardian or trustee admit the claim, the admission is of no effect and no judgement may be issued based thereon. They may, however, make a valid denial and an action brought by the plaintiff as a result of such denial, and the plaintiff's evidence, will be heard. If an action is brought as the result of an admission based upon contract concluded by a tutor, guardian or trustee of a pious foundation, the action will be heard.

Example:- A tutor sells property belonging to a minor, having legal justification for so doing. The purchaser brings an action in connection therewith. An admission made by tutor is valid.

- 1635. In an action relating to some specific piece of property, the person in possession must be made defendant.

Example:- A wrongfully appropriates B's horse and sells and delivers it to C. B wishes to get his horse back. He must bring his action against the person in possession of the horse. If he wishes to recover the value of the horse, however, he must bring his action against the person who has wrongfully appropriated the horse.

- 1636. If a person brings an action claiming that he is entitled to property which has been purchased, it must be ascertained whether the purchaser has taken delivery of such property. If so, the defendant at the trial of the action and hearing of the evidence will be the purchaser only. There is no need for the vendor to be present. If the purchaser has not yet taken delivery of the property from the vendor, both the purchaser of the property, and the vendor as the person in possession of the property, must be present at the trial of the action.
- 1637. In actions relating to a thing deposited for safe keeping brought against the person with whom it has been deposited, or to a thing lent against the person borrowing it, or a thing hired against the person hiring it, or a pledge against the pledgee, both parties must be present. But if property deposited for safe keeping, or lent, or hired, or pledged has been wrongfully appropriated, the person in possession of such property may bring the action against the person wrongfully appropriating and there is no need for the presence of the owner. If such persons are not present, the owner alone may not bring the action.
- 1638. A person to whom property has been entrusted for safe keeping may not be made defendant in an action against the purchaser.

Example:- A brings an action against B alleging that he is in possession of a house which he bought from C for a certain sum of money, claiming that the house be handed over to him. B replies that C handed the house over to him for safe keeping. The plaintiff's claim fails and B is not obliged to prove that C in fact handed the house over to him for safe keeping. If A admits that C handed the house to B for safe keeping, but adds that thereafter C sold it to him and made him his agent to receive it from C, and A proves the sale and his appointment as agent, he is entitled to take the house from the person to whom it has been entrusted for safe keeping.

- 1639. A person to whom a thing has been entrusted for safe keeping cannot be made defendant in an action brought by the creditor of the person depositing the thing for safe keeping with him. Consequently, if a creditor proves before a person to whom property has been entrusted for safe keeping that a debt is owing to him by the person depositing such property, he cannot satisfy his debt from such property but, as is set forth in Article 799, a person who is entitled to maintenance from some absent person may bring an action claiming that the sum necessary for his maintenance shall be paid to him from money deposited by the absent person for safe keeping.
- 1640. A creditor may not bring an action against a person in debt to the person owing him money. Consequently, if any person proves before a person in debt to a deceased person that he has a claim against such deceased person, he may not obtain payment from the debtor.
- 1641. A vendor may not bring an action against a person who purchased something which he has sold to some other person.

Example:- A sells property to B. B takes delivery thereof and sells it to C. A may not bring an action against C alleging that B has bought the property from him and has taken delivery thereof without paying the price and that he claims the price from C, or that he claims the thing sold in order to exercise a right of retention over such thing until he has received payment of the price

- 1642. In the case of a deceased person, one of the heirs alone may become plaintiff, or act as defendant, in actions brought of behalf of or against such deceased person. In the case of an action brought to recover some specific piece of property from the estate, however, the heir in whose possession the property is, must be made defendant. The action may not be brought against an heir who is not in possession of such property.

Examples:-

(1). One of the heirs alone may bring an action to recover a debt owing to the deceased. After proving his claim judgement is given for all the heirs for the total amount of the claim. The heir acting as plaintiff can obtain his own part alone. He cannot obtain the shares of the other heirs.

(2). A person brings an action to recover a debt owing by the estate of a deceased person. He may bring the action in the presence of one of the heirs only, and this, whether such heir is in possession of property belonging to the estate or not. If the heir in question admits the debt in an action brought in this way, and this admission in no way binds the other heirs. If he does not admit the debt, and the plaintiff proves his case in his presence alone, judgement shall be given against the whole of the heirs. Upon the plaintiff proceeding to collect the amount of the debt from the estate, the other heirs may not call upon him to prove the debt again in their presence. They have the right, however, of defending the action brought by the plaintiff.

(3). If a person brings an action to recover a horse in the possession of one of the heirs only, prior to partition of the estate, and which he claims he deposited with the deceased for safe keeping, the heir in possession of the horse may be made defendant. No action will be heard against any other of the heirs. If the person in possession admits the claim, judgement should be given in accordance with such admission, which does not effect the other heirs. His admission is effective in respect to the amount of

his own share only and the judgement shall state that his share is the horse belongs to the plaintiff proves his case, Judgement shall be given against the whole of the heirs. (See Art. 78).

- 1643. If an action is brought claiming some specific piece of property owned by several joint owners, the ownership arising out of some cause other than inheritance, one of the joint owners may not be made defendant in respect to the share of the other.

Example:- A brings an action claiming as his a house which has been purchased jointly by several persons, and proves his case in the presence of one of the joint purchasers only. If judgement is given in his favour, the judgement relates to such joint owner's share only and does not extend to the others.

- 1644. In an action brought in respect to places affecting the public interest, such as the public highway, where one member of the public only is plaintiff, the action shall be heard and judgement given against the defendant.
- 1645. In an action relating to things the benefit of which is jointly owned by two villages, as in the case of a river or grazing ground, the inhabitants of which are indeterminate in number, the presence of a certain number of them is sufficient. If they are determinate in number, however, it is not enough for some of them to be present, but the whole of them must be present either personally, or through their representative.
- 1646. The inhabitants of a village which are more than a hundred in number are considered to be indeterminate in number.

#### **SECTION IV. ESTOPPEL.**

- 1647. A statement contradicting a statement previously made with regard to the same matter invalidates an action for ownership.

Examples:-

(1). If a person arranges to purchase a piece of property, but before completing the purchase brings an action claiming that such property is his own absolutely, such action will not be heard.

(2). If a person states that he has no right to any particular thing, but, nevertheless, brings an action claiming that such property is his own absolutely, such action will not be heard.

(3). A brings an action against B asserting that he gave a certain amount of money to B to hand to C. A further states that B retained the money instead of giving it to C as directed, and that he instructed B to fetch the money and pay it over to C. The plaintiff establishes his case by evidence. If the defendant denies such statements but later, while admitting having received the sum of money for delivery to C, states that he has in fact delivered it to C, and seeks to bring an action in rebuttal of the plaintiff's claim, such action cannot be heard.

(4). A brings an action alleging that a certain shop in the possession of B is his property. B admits that the shop was formerly A's property, but asserts that A sold it to him on a certain date. A completely denies this statement, stating that they had never concluded a contract of sale and purchase. If B, the person in the possession of the shop, proves his case, the plaintiff cannot later be heard to say that he did in fact sell the shop to B, but the sale was a sale subject to redemption, or subject to a condition making the contract voidable.

- 1648. If a person admits that certain property belongs to another, he may not later bring an action claiming that such property is his, nor may he bring an action on behalf of any other person, such as his agent or guardian.
- 1649. If a person releases another from all actions, he may not later bring an action against such person claiming from him property which he asserts to be his own. This, however, will not prevent him from bringing an action on behalf of another person, in the capacity of such person's agent or guardian.
- 1650. A person who has brought an action claiming property on behalf of another person may not later bring an action claiming such property as his own. But after bringing an action on his own behalf he may bring an action on behalf of some other person in the capacity of such person's agent, the reason being that an advocate sometimes claims property in his own name, but a person who is himself a party to an action does not assert that the property belongs to another.
- 1651. One claim cannot be paid separately by two persons. Similarly, a claim arising from a single cause cannot be demanded from two persons.
- 1652. Estoppel operates to prevent two persons claiming the same thing, as in the case of an agent and the person appointing him and an heir and the person from whom he inherits, if estoppel would operate to invalidate a claim in an action by one person. Thus, if in an action an agent introduces a claim in conflict with an action previously instituted by his principal, such claim is invalid.
- 1653. If one of the parties admits the claim, the estoppel ceases to be operative.

Example:- A brings an action claiming that he has lent a certain sum of money to B. A later brings an action asserting that the sum of money was by way of guarantee. The defendant admits this, whereupon the estoppel ceases to be operative.

- 1654. If the Court finds a statement to be false, the estoppel ceases to be operative.

Example:- A brings an action claiming certain property in the possession of B. The defendant disputes the claim, alleging that the property belongs to C from whom he bought it. If the plaintiff proves his case, he gets judgement. The person against whom judgement is given has a right of recourse against the vendor for the price of the property, because B was estopped from having recourse against the vendor by reason of his admission that such property belonged to the vendor. The estoppel ceases to be operative, since the judgement of the Court has disregarded the admission.

- 1655. If the matter is subject to doubt, and the plaintiff can offer a satisfactory explanation, the estoppel is removed.

Example:-

(1). A hires a house, and later brings an action against the lessor asserting that his father bought the house from him when he was a child, adding that at the time he hired the house he was not aware of the facts of the case. If A can produce documentary evidence of the title the case will be heard.

(2). A hires a house and later brings an action against the lessor claiming that he had ascertained that such house had devolved upon him some time previously by way of inheritance from his father. The case will be heard.

- 1656. The commencement of the division of an estate is an admission that the property divided has been held in common. Consequently, a plaintiff is estopped from bringing an action after the division of the property, alleging that the property divided belongs to him.

Example:- A, an heir, brings an action after the division of the estate asserting that he bought one of the things divided from the deceased person, or that the deceased person while in good health bestowed such thing upon him by way of gift and gave delivery thereof. Such action will not be heard. But if A asserts that the deceased person gave him the property in question while he was an infant and that at the time of the division of the property he was unaware of such fact, this is regarded as a valid excuse and the case will be heard.

- 1657. If it is possible to reconcile two apparently contradictory statements, and if the plaintiff does in fact explain away any apparent contradiction, there can be no estoppel.

Example:-

(1). A admits that he is the lessee of a house. Later, he brings an action alleging that he is the owner of the house. The case will not be heard. But if explains away the contradiction by stating that he bought the house from the owner after he had hired such house, the case will be heard.

(2). A brings an action claiming the return of a sum of money advanced by way of loan. The defendant by his reply states that he has received nothing from him, or that the two parties had no business transaction together of any sort, or that he does not know the plaintiff. A proves his case. If the defendant later brings an action against A asserting that he has repaid the sum in question, or that A released him from repayment thereof, the defendant is estopped from bringing such action by reason of the contradiction. But if, upon the case being brought by A, the defendant replies that he owes nothing and when the plaintiff proves his case admits owing the sum, but asserts that he has since repaid it, or has been released from repayment thereof by the plaintiff, and proves his case, there is no estoppel.

(3). A brings an action against B alleging that he has deposited something with B for safe keeping and claiming the return thereof. The defendant replies denying the allegation and stating that no such thing was ever deposited with him for safe keeping. A proves his case by evidence and the defendant then seeks to defeat A by alleging that he has returned the thing to A and given delivery thereof. B is estopped from making such defence. If the thing entrusted to B for safe keeping is in the possession of B, the plaintiff takes the thing itself. If it is no longer in existence, however, B must pay A the price thereof. But if A brings an action and B replies alleging that no such thing

belonging to the plaintiff has ever been deposited with him for safe keeping, and A then proves his case by evidence, and B admits that A deposited the thing with him for safe keeping, but that he has returned such thing to A and given A delivery thereof, B is not estopped.

- 1658. A person who admits being a party to an unconditional and perfectly valid contract, his admission being reduced to writing, is estopped from alleging later that the contract was entered into subject to a condition as to redemption, or is voidable. (See Art. 100).

Examples:-

(1). A sells and delivers his house owned in absolute ownership to B for an agreed price. A then goes into Court and makes an admission to the effect that he has sold his house to B, the boundaries whereof are as stated, such sale being unconditional and perfectly valid, for a certain sum of money. If a later, after his admission has been reduced to writing, brings an action stating that the sale was subject to a condition as to redemption, or that it was made subject to a condition rendering it voidable, such action will not be heard.

(2). If A settles an action which he has brought against B, and makes an admission in Court that the settlement has been validly made, and after such admission has been reduced to writing brings an action alleging that the settlement was made subject to a condition making it voidable, such action will not be heard.

- 1659. If A in the presence of B sells property held in absolute ownership, which he asserts is his own, to C, and gives delivery thereof to him, and B later brings an action alleging that such property is his or that he has a share therein, although he was present when the sale took place and kept silence without any valid excuse for so doing, it must be ascertained whether B is a relative of the vendor, or his or her husband or wife. If so, the action will not be heard in any case. If he is a stranger, the fact that he was present at the time the sale was concluded, does not of itself prevent the hearing of the action. On the other hand, if, in addition to being present when the sale took place, he keeps silence without any valid excuse for so doing while the purchaser deals with the property as though it were his own, such as by erecting buildings or pulling them down, or planting trees thereon, and then brings an action claiming that such property is his own, or that he has a share therein, such action will not be heard.

## CHAPTER II. LIMITATION.

- 1660. Actions relating to a debt, a property deposited for safe-keeping, or real property held in absolute ownership, or inheritance, or actions not relating to the fundamental constitution of a pious foundation, such as actions relating to real property dedicated to pious purposes leased for a single or double rent, or to pious foundations with a condition as to the appointment of a trustee, or the revenue of a pious foundation, or actions not relating to the public, shall not be heard after the expiration of a period of fifteen years since action was last taken in connection therewith.

- 1661. Actions brought by a trustee of a pious foundation relating to the fundamental constitution thereof or by persons maintained by such foundation may be heard upto a period of thirty-six years. They shall not be heard in any event, however, after the period of thirty-six years has expired.

Example:- A has held a piece of real property in absolute ownership for a period of thirty-six years. The trustee of a pious foundation thereupon brings an action claiming that the piece of real property in question is part of the land belonging to his pious foundation. The action will not be heard.

- 1662. Actions relating to a private road, to a right of flow and to a right of taking water, when relating to real property held in absolute ownership, shall not be heard after the expiration of a period of fifteen years. If they relate to real property which has been dedicated to pious purposes, however, the trustees thereof is entitled to bring an action relating thereto up to a period of thirty-six years. Actions relating to the government land and actions relating to private roads, to a right of flow and to a right of taking water, if they concern government land, shall not be heard after the expiration of a period of ten years since action was last taken in connection therewith.
- 1663. Limitation which is effective in this connection, that is to say, which prevents an action being heard, relates only to a period of time which has been allowed to elapse without any excuse. The effluxion of time which has occurred by reason of some lawful excuse, such as cases where the plaintiff is a minor, or a lunatic, or an imbecile, and that whether he has a guardian or not, or where the plaintiff has gone to some other country for the period of a journey, or where the plaintiff has gone to some other country for a period of a journey, or where the plaintiff has been in fear of the power of his opponent, is disregarded. Consequently, limitation begins to run from the time of the cessation or removal of the excuse.

Examples:-

(1) No attention is paid to time which has elapsed while a person was a minor. The period of limitation only begins as from the time he reaches the age of puberty.

(2) A has an action against B, a person in authority of whom he stands in fear. If time has elapsed by reason of A's not being able to bring an action against B while in authority, this fact shall not prevent an action being brought. the period of limitation only begins to run from the date of the cessation of the power of B.

- 1664. The period of a journey is three days at a moderate speed, that is a distance of eighteen hours.
- 1665. If one of two persons living in places which are separated from each other by the period of a journey, meets the other person in one of such places once during a certain number of years, so that an action pending between them can be brought to trial, but neither of them takes any steps in the matter, no action may be brought by one against the other in respect to any matter which arose before the period of limitation began to run.
- 1666. If any person brings an action in Court against any other person in respect to some particular matter once in a certain number of years, without the case being finally decided, and in this way fifteen years pass by, the hearing of the action is not barred. But any claim made out of Court does not cause the period of limitation to cease to run. Consequently, if any person makes a claim in respect to any particular matter elsewhere than in Court, and in this way the period of limitation elapses, the hearing of an action by the plaintiff is barred.
- 1667. The period of limitation begins to run as from the date at which the plaintiff had the right to bring an action in respect to the subject matter of his claim. Consequently, in an action in respect to a debt repayable at some future definite date, the period of limitation only begins to run as from the date on which the debt fell due for payment, since the plaintiff has no right to bring an action in respect to the debt before the due date has arrived.

Examples:-

(1). A brings an action against B claiming from him the price of a thing sold to him fifteen years ago, subject to a period of three years for payment of the price. The action may be heard, since only twelve years have passed since the date of payment arrived.

(2). An action is brought in regard to property dedicated to pious purposes limited to children from generation to generation. The period for limitation is respect to an action brought by children of the second generation begins to run as from the date of the extinction of the children of the first generation, since the children of the second generation have no right to bring an action while the children of the first generation are alive.

(3). In actions relating to a marriage portion payable at a future date, the period of limitation begins to run from the date of the divorce or death of one of the spouses, since a marriage portion payable at a future date only falls due for payment on divorce or death.

- 1668. Limitation in respect to a person who is bankrupt only begins to run as from the date of the cessation of the bankruptcy.

Example:- A brings an action against B, who has been insolvent for fifteen years, and who recently has come into funds, in respect to a debt owing for a period of fifteen years, having refrained from bringing the action previously owing to B's being bankrupt. The action will be heard.

- 1669. If any person as mentioned above fails to bring an action without any excuse, such action is barred by effluxion of time and will not be heard during his lifetime, nor, on his death, will an action by his heirs be heard.
- 1670. If a person entitled to bring an action fails during a certain period to do so and on his death his heir likewise fails to do so for a certain period and the total of both periods amounts to the period of limitation, such action will not be heard.
- 1671. A vendor and purchaser, a person making and a person receiving a gift are like a person leaving property and a person inheriting property.

Examples :-

(1). A owns a piece of land for a period of fifteen years. B who owns a house abutting on to A's land takes no action during this period, and thereafter sells the house to a third person. The purchaser then brings an action against A alleging that A's land comprises a private road leading to his house. The action will not be heard.

(2). The vendor remains silent for a period and the purchaser similarly remains silent for a period, if the total amount of both periods amounts to the period of limitation, an action brought by the purchaser will not be heard.

- 1672. If some of a number of heirs in an action brought in respect to property of the deceased in the possession of some third person are barred owing to the period of limitation having elapsed, and others, by reason of some valid excuse, such as that they are minors, are not, and such action is successful, judgement shall be given in their favour for their share of the property, but such judgement shall be given in their share of the property, but such judgement shall not include the others.
- 1673. If any person admits that he has taken certain real property on hire, he may not claim to have become the owner of such property by reason of a period of more than fifteen years having elapsed. But if denies that he has taken it on hire and the owner states that the real property in question belongs to him absolutely, that he gave it on hire to him a certain number of years ago, and that he has always received the rent, the question will be examined as to whether the lease is generally known among the people, and if so, the action will be heard, but not otherwise.
- 1674. A right is not destroyed by the effluxion of time. Consequently, if the defendant explicitly admits and confesses in Court in a case in which the period of limitation has elapsed that the plaintiff is entitled to bring his action, the limitation is of no effect and the judgement will be given in accordance with the admission of the defendant. If the defendant, however, makes no admission in Court and the plaintiff alleges that he made the admission else where, the plaintiff will fail both on the original action and on the admission. But if the admission which is the subject of the action was reduced to writing at some previous date in a document known to contain the seal or handwriting of the defendant, and the period between the date on which such document was drawn up and the date of bringing the action is less than the period of limitation, an action on the admission will be heard.
- 1675. No period of limitation applies to actions concerning places appropriated to the use of the public such as the public highway, rivers and pasturing grounds.

Example :- A has appropriated and held a pasture ground belonging to a particular village for a period of fifty years without his right thereto being disputed. Thereafter the inhabitants of the village bring an action against A in respect to the pasture ground. The action will be heard.

**PROMULGATED BY ROYAL IRADAH, 9 JUMADI UL UKHRA, 1293.**